

December 17 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

SUPREME COURT CAUSE NO. 1109-0674

Robert James Thomas DOC# 2067081
Pro Se Appellant
Dawson County Correctional Facility
440 Colorado Blvd.
Glendive, MT 59330
(406) 377-7600

ROBERT JAMES THOMAS,
Appellant,

v.

STATE OF MONTANA,
Appellee.

FILED

DEC 17 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANAPETITION FOR APPOINTMENT
OF COUNSEL

The undersigned appellant requests the appointment and assistance of counsel and I hereby certify under penalty of perjury that the following facts are true in support of this petition for counsel:

1. I am a petitioner of post-conviction relief based on newly discovered and credible evidence that, if proved and viewed in light of the evidence as a whole, will establish my actual innocence of felony criminal endangerment which is my only incarcerating offense.
2. I represent that my wrongful conviction is a fundamental miscarriage of justice as defined by State v. Redcrow, 1999 MT 95, ¶33, 294 Mont. 252, ¶33, 980 P.2d 622, ¶33. The appointment of counsel will cease such from continuing. Authority to appoint counsel on these grounds can be found at §46-8-104(1)(e).
3. I represent to this Honorable Court that I am currently incarcerated and lack meaningful legal materials, resources, and the esotersic training needed to successfully defend against the efforts of the State. Both §§46-8-104(2) and 46-21-201(2) state that in the interest of justice and under the extraordinary circumstances listed above, appointment of counsel shall be made.
4. I represent that the appointment of counsel is warrented to preserve due process, compensate for the lack of case law regarding post-conviction relief based on newly discovered evidence, and enable the needed investigation and research to concrete my claim of actual innocence.

The petitioner relies on the following Montana Supreme Court case law in support of his petition for counsel: Swearingen v. State, 2001 MT 10, 304 Mont. 97, 18 P.3d 998. See also, Ranta v. State, 1998 MT 95, 288 Mont. 391, 958 P.2d 670; Woods v. State, 2001 MT 1523, 305 Mont. 535, 27 P.3d 440.

CONCLUSION

WHEREFORE, given the foregoing reasons, the appointment of counsel should be strongly considered in this case and that this petition will therefore, be granted accordingly.

DATED this 11th day of December, 2009.

Robert J. Thomas

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